

To: Beck, Nancy[Beck.Nancy@epa.gov]
Cc: Bowman, Liz[Bowman.Liz@epa.gov]; Graham, Amy[graham.amy@epa.gov]
From: Wilcox, Jahan
Sent: Thur 6/22/2017 6:21:03 PM
Subject: Re: FYI- Politico Article

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Sent from my iPhone

On Jun 22, 2017, at 2:15 PM, Beck, Nancy <Beck.Nancy@epa.gov> wrote:

FYI

POLITICO PRO: EPA memo reveals staff concerns about chemical safety rules

EPA memo reveals staff concerns about chemical safety rules

By Annie Snider and Alex Guillén

06/21/2017 09:53 PM EDT

The Trump EPA is poised to roll out new rules to implement a landmark chemical safety law that were heavily shaped by a former top official from the chemical industry lobby.

The rules will also embrace some key industry priorities by limiting the scope of the agency's review of thousands of substances.

An internal EPA memo reviewed by POLITICO showed that EPA staff experts raised concerns about changes made to the implementation plan for the Toxic Substances Control Act in the weeks since Nancy Beck was appointed by EPA Administrator Scott Pruitt to a top post in the office, overseeing the bipartisan chemical safety law that Congress passed last year. Beck joined EPA in mid-April after working as the American Chemistry Council's senior director of regulatory science policy, where she led the industry effort to influence EPA on the law.

The May 23 memo points to several changes made to one rule in particular after Beck's arrival at EPA that closely align with positions long advocated by chemical makers.

According to the memo, EPA plans to allow its initial analysis on the safety of a chemical to be limited only to some of its uses, rather than the full array of current and likely future

uses. EPA's top chemicals enforcement official argues in the memo that the narrower scope may lead the agency to miss potential uses "that present an unreasonable risk to health or the environment."

EPA officials told POLITICO that the issues raised in the memo from the agency's enforcement office, dubbed OECA, were part of a typical intra-agency consultation process. But they declined to specify whether the agency's proposals, now under review at the White House, take those concerns into account.

Jeff Morris, director of EPA's Office of Pollution Prevention and Toxics — the division charged with writing the rules implementing TSCA — said chemical safety officials met with the enforcement office "and talked through their comments, and based on that discussion, we moved forward with the rule. At the end of the day, OECA concurred on our approach."

That doesn't mean the final rule incorporates OECA's suggestions, he added, but in the end it produced a rule "that we could all support."

Thursday marks the anniversary of the 2016 revamp of the 40-year-old TSCA, which regulates the tens of thousands of chemicals in use in the U.S. — a major bipartisan achievement in a deeply divided Congress. Neither political party disputed that the law needed an update, since the original version didn't even allow EPA to ban asbestos — a known carcinogen — and some states had begun to step in and create their own patchwork of regulations for chemicals.

Congress took two years to hash out the TSCA compromise, ultimately winning support from chemical makers and some environmental groups for the legislation that beefed up EPA's power to regulate harmful chemicals. And rather than relying on EPA to prove that a substance was dangerous, the law shifted some of the burden to industry to show a chemical's safety.

But TSCA also gave EPA latitude to determine how to go about examining thousands of chemicals — effectively setting the scope of the review for substances ranging from corrosive chemicals used in refining to the paints and plastics in children's toys.

EPA's plans to implement TSCA are due out as early as Thursday in the form of three final regulations known as the "framework rules." One rule lays out how EPA will prioritize its assessments of chemicals, dividing them into high- and low-risk categories. Another rule details methods for studying the health and environmental risks of each chemical, and the third will cull from EPA's list any substances not used commercially since 2006 — a change that Jim Cooper, a senior petrochemical adviser at American Fuel and Petrochemical Manufacturers, estimates will shrink the number on the list to be reviewed from 85,000 chemicals to around 30,000, prohibiting those removed from future use until reviewed by the agency.

Pruitt has made TSCA a top priority under his "back to basics" strategy that has been

marked by the rollback of several Obama-era environmental regulations. Funding for TSCA implementation would be increased under the Trump administration's 2018 budget proposal, while other chemical safety programs and nearly every aspect of EPA would be cut sharply.

EPA's political leaders have pressed the agency's staff to meet the aggressive deadlines laid out under the law for new rules and individual chemical evaluations, but environmentalists say they are more concerned with the substance of the implementation rules. Congressional Democrats and green activists were already worried about the approach an anti-regulatory administration might take to toxic substances, especially with President Donald Trump's support for asbestos, which he once complained got a "bad rap."

Those fears rose with the arrival of Beck, who worked as an OMB analyst for a decade before joining the American Chemistry Council, which she represented at a March Senate hearing to criticize the Obama administration's proposed TSCA implementation.

Melanie Benesh of the Environmental Working Group called Beck the "scariest Trump appointee you've never heard of," and pointed to a 2009 Democratic congressional report that alleged that Beck, during her tenure at OMB, worked to delay and undermine EPA's chemically studies.

In a letter to Pruitt on Wednesday, Frank Pallone, the top Democrat on the House Energy and Commerce Committee, argued that Beck's appointment "has the potential to undermine the scientific integrity of EPA's TSCA implementation and the consumer confidence we sought to build with a reformed TSCA." Pallone is seeking information about Beck's involvement with the chemicals rules and the issues she is ethically allowed to work on.

Beck told POLITICO that she has been "very involved" with the rulemaking for the past two months at EPA.

A statement from EPA's senior ethics counsel said Beck did not need to recuse herself from working on the TSCA rules because they are "matters of general applicability." The counsel added that Beck was cleared to talk with her former employer about the rules and to consider the comments it submitted.

The internal staff memo raising concerns about the changes in TSCA rules, reviewed by POLITICO, was sent by the head of EPA's Waste and Chemical Enforcement Division to Wendy Cleland-Hamnett, the acting assistant administrator for EPA's chemical office, the same day part of the final rules package was sent to the White House for review. It lays out a number of concerns about changes the Trump administration made to the Obama EPA's January proposal to a section governing which chemicals warrant the most thorough safety evaluation.

Among the concerns was that EPA would only consider a limited set of uses for a chemical when deciding whether it warrants further scrutiny, rather than examining all of the different ways that people could be exposed to it.

In an interview, Cleland-Hamnett declined to describe how the final rule treats the issue, but said EPA is aiming to prioritize the chemical uses that present the greatest risk, and that it wasn't prohibiting a broader analysis.

"Not that those are the only uses we would evaluate, but we do want to make sure that we're evaluating those uses," she said. "So I think we've addressed the concern that we might not evaluate the uses that could prevent unreasonable risk."

That issue has been a sticking point among environmentalists, public health advocates and the industry. Chemical manufacturers may produce a substance for a specific use, said Richard Denison, lead senior scientist at the Environmental Defense Fund, but once it's put on the market, it can end up being used in a wide variety of ways.

"That chemical that the company may intend to use solely in industrial settings may very well be bought by another company that decides to put it in a consumer product that is sold at your local hardware store," he said, arguing EPA should consider both.

But Mike Walls, vice president of regulatory and technical affairs at the American Chemistry Council, said the process should differentiate between different uses of each chemical to determine specific restrictions for each.

"Risks can be managed along a spectrum of measures, running from a ban at its most extreme, to things like labeling or warning requirements," he said. "So that risk evaluation process is really critical."

Another concern raised by the EPA enforcement office is whether EPA focuses solely on chemicals that are being actively manufactured when it weighs threats to human health, or whether it also considers other ways that people might be exposed to the substance. For instance, a class of fire retardant known by the acronym PBDEs are no longer in production, but were used for decades in furniture that is still in homes across the country. As the chemicals break down, they settle on dust that people breathe in, so public health advocates have pressed to include that when evaluating health risks. But the chemical industry asserts that little can be done now to tamp down on such exposures, and they're outside the purview of the law.

EPA is also due to release a decision soon on the scope of its first 10 chemical reviews, which include asbestos, several dry cleaning chemicals and a purple dye thought to hurt fish and other aquatic life. Industry groups are closely watching whether EPA decides to review those chemicals for all possible exposures, or whether it will limit its review to narrow, specific uses.

The agency said it plans to release those scoping decisions at the same time as the framework rules. Further study of those chemicals will take years.

But even as greens have raised alarms about the efficacy of the new chemicals law under the Trump administration, both sides say that industry has an interest in making sure that it

works. After all, it was lack of public trust in the old system that brought everyone to the table a year ago to fix it, said Dimitri Karakitsos, who negotiated the chemicals overhaul measure as a staffer for Senate Republicans.

"Industry and Republicans care very much about a credible system that works, and so does EPA," said Karakitsos, now a partner at the law firm Holland & Knight LLP. "If implementation isn't happening, states ramp up activity again, and that can result in an inconsistent patchwork of regulations and significant impediments to interstate commerce."

To view online:

<https://www.politicopro.com/energy/story/2017/06/epa-memo-reveals-staff-concerns-about-upcoming-chemical-safety-rules-158656>